

PURCHASE ORDER TERMS & CONDITIONS

The portion of the Purchase Order document that follows the heading **Purchase Order Details** (as contains product description, quantity, unit price, etc.) shall be referred to as the “**Purchase Order Details**”. That portion of the Purchase Order document as follows the heading **General Instructions** shall be referred to as the “**General Instructions**” (as contains these Purchase Order Terms & Conditions). Collectively, this document as a whole shall be referred to as “**Purchase Order**”.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and adequacy of which is hereto acknowledged by the Parties, the Parties agree as follows:

A. Definitions and Interpretation

1. In this Purchase Order, the definitions as set out at URL: <http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/definitions> [the “**Definitions**”] are hereby adopted and shall govern.
2. The Definitions may be updated from time to time at CPR’s sole and arbitrary discretion.
3. In addition to the Definitions, in this Purchase Order:
 - a) All Goods, Materials and/or Services delivered pursuant to this Purchase Order shall collectively be called the “**PO Deliverables**”; and
 - b) Use of ‘**CPR**’ and ‘**CP**’ is interchangeable.

B. Supplier’s Obligations

1. **Purchase:** The terms contained in the Purchase Order Details of this Purchase Order (as contains product description, quantity, unit price, payment terms, etc.) shall always govern, whereas, the General Instructions of this Purchase Order (as references these Purchase Order Terms and Conditions) shall only govern to the extent there is no written agreement in place between Supplier and CPR specifically identified to govern this transaction.
2. **Counter Offer:** In respect of the PO Deliverables, to the extent the Supplier provides alternative contractual terms in an Offering Document, unless the same is physically signed by CPR and returned to Supplier, this Purchase Order shall be deemed a counter offer and such terms are expressly rejected. Acceptance of this counter offer shall be demonstrated by the Supplier commencing effort (even if internal in Supplier organization alone) related to commencing production or supply of the PO Deliverable.
3. **Compliance with Laws:** Supplier shall comply with all federal, provincial, state, local and municipal laws, regulations, by-laws, orders, related industry best practices, rules, and regulations of any authority having jurisdiction respecting the PO Deliverables, including all laws respecting the import, export, sale and shipping of the PO Deliverables, including Commercial Software and Commercial Software Proprietary Tools, and all Applicable Law.
4. **Subcontracting:** Supplier shall not subcontract, or further re-subcontract, in whole or any part of its obligations hereunder without receiving advance written consent from CPR (which consent may be withheld in CPR’s sole and arbitrary discretion). Where such consent is granted, Supplier shall not be released or relieved from any obligations or liabilities in this Purchase Order nor shall CPR be prevented from pursuing any legal or equitable remedies it may be entitled to. Supplier shall remain liable and responsible to CPR, and shall indemnify CPR in accordance with

Section G - Indemnity and Waiver, for the acts and omissions of any subcontractor and shall ensure that such subcontractor(s) strictly adheres to all terms of this Purchase Order (including Safety and Security requirements).

5. When requested by CPR, Supplier shall provide CPR with all details concerning subcontracted work.
6. **Delays:** Supplier shall provide CPR with immediate notice of delay upon becoming aware of any occurrence which delays or, in Supplier's reasonable opinion, may delay Supplier's performance of any Supplier obligation hereunder.
7. **Safety and Security:** The Safety and Security terms are contained in the Definitions and, like all definitions referenced herein, these terms apply *mutatis mutandis* to this Purchase Order.
8. **The Records and Audits:** The Records and Audits terms are contained in the Definitions and, like all definitions referenced herein, these terms apply *mutatis mutandis* to this Purchase Order.
9. **Code of Business Ethics:** Supplier undertakes to adhere to principles and standards of business conduct consistent with those set forth in CPR's Code of Business Ethics, a copy of which is available for viewing at URL:
<http://www.cpr.ca/en/about-cp/selling-to-cp/information-technology/code-of-business-conduct>
10. **Warranty Period:** The Warranty Period definition is contained in the Definitions and, like all definitions referenced herein, these terms apply *mutatis mutandis* to this Purchase Order.

Workers' Compensation

11. Supplier shall at all times comply with all applicable provincial workers' compensation legislation including the *Workers' Compensation Act*, RSA 2000, c W-15 and any American equivalent legislation including those outlined in the paragraphs below when such legislation applies and shall, upon request by CPR, deliver to CPR a certificate from any applicable Workers' Compensation Board (or such other similar organization) [the "**Board**"] showing that Supplier is registered and in good standing with the Board. Supplier's workers compensation account number and the jurisdiction of coverage shall be provided to CPR prior to Supplier commencing work on any site owned, controlled or occupied by CPR; and
12. For work performed in the United States of America, confirmation of Workers Compensation insurance which shall be in strict accordance with the requirements of the most current and applicable State Workers Compensation Insurance Laws, and Employers' Liability Insurance, including Occupational Disease Insurance with limits of not less than One Million Dollars (\$1,000,000) each accident/each employee, and where appropriate coverage under said policies to be extended for liability under the American *Federal Employers' Liability Act*, *Longshoremans' & Harbor Works Act*, and the *Jones Act*. The Supplier shall, before any services are commenced under this Purchase Order submit written evidence that it has obtained full workers compensation insurance coverage for persons whom it employs or may employ in carrying out the services under this Purchase Order. CPR and its associated or affiliated companies (and the directors, officers, employees, agents, and trustees of all of the foregoing) shall be waived of any and all subrogation in the event of injury, death, losses, incidents, claims and potential claims.
13. If requested by CPR or a third party acting on CPR's behalf, Supplier shall furnish CPR with written documentation from the applicable workers' compensation authorities (or their equivalent) of the jurisdiction(s) (e.g. provinces, territories, states, etc.) where the Supplier is performing its obligations pursuant to this Purchase Order confirming that the Supplier is in good standing with such authorities. Following CPR request, no Supplier invoice shall be payable until such confirmation is received and validated in writing by CPR.

C. Financial Matters

1. Subject to Supplier supplying the PO Deliverables in accordance with the terms of this Purchase Order, CPR shall pay Supplier for the PO Deliverables in the amount and manner stated in this Purchase Order (the "**Purchase Price**"). The Purchase Price shall be all inclusive (save for taxes) and constitute payment in full for the PO Deliverables.
2. Payment of an invoice or receipt of the PO Deliverables by CPR shall not be presumed or deemed a waiver of any rights afforded to CPR (e.g. acceptance periods, service levels, warranties, etc.).
3. CPR reserves the right to:
 - a) Request a refund or credit (which refund or credit shall include all of CPR's associated costs, including transport) for any PO Deliverables that does not meet the service levels, warranties, or specification provided in an Offering Document or this Purchase Order; and,
 - b) Dispute, or reject, any invoice in whole or in part.

Invoice, Electronic Data Exchange, and Payment:

4. Supplier shall submit a single invoice for the PO Deliverables to CPR's email address at IS_SVM@cpr.ca
5. Supplier's invoice (and packing slips and shipping documents, if applicable) shall be in a form reasonably acceptable to CPR and shall contain sufficient details to ascertain what PO Deliverables is being supplied, including the number of this Purchase Order, and CPR's applicable part numbers, if any.
6. Hardcopy invoices will not be accepted unless agreed to in writing by CPR. If hardcopy invoices are agreed to, they will be sent to by post to:

Canadian Pacific Railway Company
ATTN: IS Invoicing Team
Building #1, 7550 Ogden Dale Road SE
Calgary, AB, Canada T2C 4X9

7. Supplier's invoice shall indicate:
 - a) the applicable legal CPR entity (in the event no CPR legal entity is named, the default shall be Canadian Pacific Railway Company), and;
 - b) the applicable sales and use taxes for the PO Deliverables as separate amounts and indicate the net taxable value including all applicable discounts.
8. If requested by CPR, Supplier shall provide documentation in support of an invoice to CPR in a form and content acceptable to CPR.
9. CPR shall remit payment within forty (40) days of receipt of an invoice prepared in accordance with this Purchase Order, unless CPR disputes any portion of the invoice in accordance with **Section D - Delivery Terms** CPR shall pay such invoice less the disputed amount subject to adjustment upon resolution of the dispute. Non-payment by CPR of any amount in dispute shall not alleviate, diminish or modify Supplier's obligations to perform as required in this Purchase Order.
10. CPR shall not be obligated to pay any taxes to Supplier unless Supplier is registered with the applicable tax authority and provides its registration number on the invoice.

- 11.** CPR shall be entitled to withhold from Supplier any amounts required to be withheld under applicable tax legislation, and any remittance of withholding taxes to the applicable tax authorities shall be deemed to be payment to Supplier.
- 12.** If requested by CPR, Supplier undertakes to conduct business transactions using electronic data interchange ("**EDI**"). Each Party will be solely responsible for all costs they incur using EDI. It is the responsibility of Supplier to store a complete, chronological record of all EDI messages sent by Supplier to CPR including transmission logs in the event of a dispute regarding the processing or acknowledgment of EDI messages. It is the responsibility of Supplier to ensure the electronic or computer records of the EDI messages and the transmission log shall be readily accessible, are capable of being reproduced in a human readable form, and of being printed.
- 13. Tax (For Canada):** For the acquisition of PO Deliverables to be consumed in Canada, Supplier shall:
- a) Be liable for and indemnify and reimburse CPR for any Claims made or assessed against CPR arising from Supplier's non-compliance with any applicable tax laws. Upon request, Supplier shall provide to CPR written certification that it has complied with such tax laws. Where applicable, Supplier shall certify to CPR that it has posted PST security, and, to the extent Supplier fails to do so, CPR shall be entitled pursuant to **Paragraph C-11 –Provincial Sales Tax** to withhold the applicable value of PST from its payments to Supplier and remit the same to the responsible authorities.
 - b) Not charge provincial or municipal sales tax on shipments to destinations in the following provinces, and the applicable tax exemption number (shown below) shall appear on the Supplier's invoice(s):
 - a. Saskatchewan: 003770-5
 - b. British Columbia: PST-1001-5810
 - c. Manitoba: 217842-7
 - c) Comply with the *Sarbanes Oxley Act*, 2002 and Canadian equivalent Bill C198/Canadian Securities Administrators rules when they apply and shall, upon demand by CPR, deliver to CPR a certificate showing that Supplier is in compliance.
- 14. Tax (For US):** For any PO Deliverables delivered or manufactured in whole or in part in the USA, or the acquisition of the PO Deliverables is to be consumed in the USA, Supplier shall:
- a) Comply with all applicable tax laws including the collection and remittance of any and all applicable taxes, levies, duties, and charges in connection with performing Supplier's obligations in this Purchase Order.
 - b) Without limiting subparagraph (a), Supplier shall be responsible for compliance with and payment of all sales taxes, use taxes, excise taxes, customs duties, and all contributions and taxes for employment compensation, insurance, and old age pensions, or annuities now or hereafter imposed by any governmental authority with respect to or covered by Supplier in the execution of any PO Deliverables.
 - c) Acknowledge that if Supplier is a non-resident as defined by the *Internal Revenue Code*, CPR is required to withhold funds as required by law.
 - d) Supplier shall provide written confirmation to CPR if it is a non-resident as defined by the *Income Tax Act* (Canada), or the Supplier is under the tax jurisdiction of the USA.
 - e) Be liable for and indemnify CPR in accordance with **paragraphs C-13(a) and C-14(e)** in respect of any Claims, penalties, interest, or costs made or assessed against CPR arising from Supplier's non-compliance with tax laws.

15. Set-Off: CPR shall have the right of set-off against any monies owed to Supplier, whether such monies are pursuant to this Purchase Order, or any other agreement, understanding or arrangement CPR may have with Supplier relating to the PO Deliverables herein or any other services, projects or materials.

D. Delivery Terms

1. Unless otherwise stated in a Transactional Document specifically referencing this Purchase Order, Parties agree to deliver the PO Deliverables Delivery Duty Paid (DDP) as set out in Incoterms 2010 Rules (as published by the International Chamber of Commerce).

2. Supplier shall pay all shipping costs to and from CPR.

3. Delivery shall be at such location and on such date as provided for on CPR's Purchase Order. If no such delivery location or date is found on CPR's Purchase Order, then the Supplier must contact the Contact Person for instructions prior to shipping. In the event no Contact Person is named or reasonably available:

- For deliveries in Canada, the Supplier will ship the PO Deliverables to:

**Building #11,
7550 Ogden Dale Road,
Calgary, Alberta
T2C4X9**

- For deliveries in US, the Supplier will ship the PO Deliverables to:

**Shoreham Yard, Material Compound, Station #4866,
2800 Central Ave. N.E.,
Minneapolis MN
55418**

4. Supplier agrees to insure all PO Deliverables at full replacement value with CPR as the named beneficiary.

5. Unless otherwise agreed to by the Parties in writing (and only where such writing specifically references this Purchase Order and the overriding of this paragraph):

a) Offloading of the PO Deliverables at the import port shall be the Supplier's cost; and

b) Transfer of title to all PO Deliverables shall occur upon Supplier's acceptance of this Purchase Order.

6. **Inspection:** CPR reserves the right to inspect the PO Deliverables within a reasonable period of time after CPR's receipt. Such reasonable period of time shall in no case be earlier than PO Deliverables installation (if applicable) or delivery and, at CPR's exclusive option, reject:

a) any of the PO Deliverables which is defective in quality, workmanship or does not conform to its specifications; or

b) any oversupplied PO Deliverables.

7. Any rejected PO Deliverables shall be at the risk of Supplier, whether held by CPR for Supplier or returned by CPR.

8. All PO Deliverables rejected by Supplier shall be picked up by Supplier, at its cost, unless otherwise instructed in writing by CPR.

9. All PO Deliverables shipped by Supplier as repaired (including replacement PO Deliverables) shall be shipped by Supplier DDP, unless otherwise instructed in writing by CPR.
10. Failure to inspect by CPR shall in no way whatsoever imply waiver by CPR to Supplier representations and warranties contained herein.
11. **Failure to Supply PO Deliverables:** In the event that Supplier cannot supply the PO Deliverables, including meeting the delivery date or any other requirement specified in this Purchase Order, Supplier shall immediately notify CPR's Contact Person (if notice is made orally, such notice shall be repeated to CPR in writing within one (1) Business Day following such oral notice). Notice shall make reference to this Purchase Order and CPR's part numbers (if any) and shall state what obligations of Supplier cannot be fulfilled. Upon receipt of such notice, in addition to the termination rights set out at **Section E - Effective Date, Term and Termination**, CPR may, at CPR's sole and arbitrary option:
 - a) Accept partial delivery for any or all PO Deliverables delivered prior to such termination provided CPR pays Supplier a proportionate share of the invoice; or
 - b) Negotiate alternative terms with the Supplier.
12. In addition to any other rights afforded CPR at law, Supplier shall be responsible to CPR for all costs and damages resulting from Supplier's delay or delivery of defective PO Deliverables.
13. **PO Deliverables Packing and Shipping:** Supplier shall ensure that:
 - a) itemized packing slips, showing the number of this Purchase Order and CPR's part numbers, if any, in a conspicuous manner, accompany each shipment of PO Deliverables and are solidly affixed on the exterior of the package;
 - b) all shipments of the PO Deliverables are made in accordance with Applicable Laws, including those relating to dangerous goods and Workplace Hazardous Material Information Systems (WHMIS). Without limiting the foregoing, Supplier shall ensure all shipments are made with all labels and accompanying documentation required by law, including where applicable a duly completed Material Safety Data Sheet;
 - c) all shipments of the PO Deliverables are made in accordance with accepted industrial packaging standards, standard packaging quantities, and as otherwise specified in this Purchase Order. Without limiting the foregoing, Supplier shall ensure that all pallet load shipments are strapped or stretch-wrapped in a manner sufficient to maintain the integrity of the load;
 - d) all packing materials used in connection with the PO Deliverables are non-toxic, otherwise safe to use and handle, and are constructed of the most environmentally friendly materials reasonably available; and
 - e) Supplier routes all shipments according to the transportation instructions set forth in this Purchase Order or as otherwise directed in writing by CPR.
14. For goods imported into Canada, prior to shipment Supplier shall provide to CPR's customs agent designated in this Purchase Order, at the address set forth in this Purchase Order, a Certificate of Origin, Canada Customs Invoice, Commercial Customs Invoice, and all other applicable documentation required by Applicable Laws, complete with CPR's part numbers, if any.
15. **Changes:** No changes or modifications to this Purchase Order, including all details herein, shall be valid unless in writing and signed by both CPR and Supplier.

16. Price Adjustment: Regardless of any prices shown in this Purchase Order, Supplier shall notify CPR and adjust its invoice to proportionately reflect any decrease in the market price(s) of the PO Deliverables. Similarly, where the price is based in whole or in part on the cost to Supplier as specified in a published price list, rate, fee, duty or tax and Supplier's cost is subsequently reduced, CPR's price shall be reduced proportionately. In the event of any increase in the market price(s) or costs of the PO Deliverables, no adjustment to the price shown in this Purchase Order shall be made unless previously agreed to in writing between Supplier and CPR.

17. Not to Exceed ("NTE") Amounts: Where an NTE amount is specified in this Purchase Order, the Fees payable under this Purchase Order shall not exceed such agreed NTE amount unless CPR provides prior written approval.

18. Liens: Supplier shall keep all property and premises of CPR free from any and all laborers', materialmen's, and mechanics' liens, and similar liens, claims or encumbrances which are attributable to Supplier's performance of its obligations in this Purchase Order (collectively referred to as a "**Lien**"). To the fullest extent permitted by law, Supplier waives all rights of any Lien against the property and premises of CPR. If Supplier fails to release and discharge any Lien against the property or premises of CPR within five (5) days of receiving notice from CPR, CPR may, at its option, take any and all steps to discharge or release the Lien, or otherwise deal with the Lien claimant, and Supplier shall pay CPR any and all costs and expenses of CPR in so doing, including legal costs on a solicitor and own client basis. Notwithstanding any provision of this Purchase Order to the contrary, CPR shall be entitled to hold back from fees otherwise payable to Supplier all such amounts as CPR may be required to holdback pursuant to any applicable federal, provincial, territorial, municipal or state legislation in respect of Liens and similar claims and encumbrances.

E. Effective Date, Term and Termination

1. Acknowledgement by Supplier of this Purchase Order, or Shipment of any PO Deliverables relating to this Purchase Order, shall be deemed acceptance of these Purchase Order Terms & Conditions by the Supplier and shall supersede any wording to the contrary on any subsequent Supplier document or invoice.
2. Unless otherwise terminated earlier in accordance with the provisions of this Purchase Order, this Purchase Order shall commence on the Effective Date and shall remain in full force and effect up to the later of (i) the PO Deliverables being delivered in full, (ii) any applicable warranty period expires, or (iii) payment by CPR of the invoice in full ("**Term**").
3. **Termination:** In addition to any other provision in this Purchase Order, CPR (in CPR's sole and arbitrary discretion) may at any time and without payment of any penalty or damages, cancel the undelivered portion of any PO Deliverables, and terminate this Purchase Order, in whole or in part upon:
 - a) providing Supplier with no less than five (5) Business Days' prior written notice specifying therein the effective date of such termination; or
 - b) immediately upon an Event of Default, Material Breach or breach of the Confidentiality terms by Supplier;

F. Representations and Warranties

1. Supplier represents, warrants, covenants, and acknowledges that:
 - a) **PO Deliverables:** The Supplier will provide the PO Deliverables in accordance with Leading Industry Practices.

Supplier has the right, title or interest to use any information, supplies, patented or copyrighted material, or any other materials, used in the manufacture or supply of the PO

Deliverables and its use of information, supplies, patented or copyrighted material, or any other materials, for the performance of its obligations in this Purchase Order shall and does not result in the disclosure of third-party trade secrets or infringe upon third-party patent, copyright, trademark or intellectual property rights.

- b) Quality:** The PO Deliverables shall conform to all specifications, drawings, samples or descriptions furnished to or by CPR and shall be merchantable, of good material and workmanship, and be free from any defects or deficiencies in manufacturer workmanship.

Supplier confirms it has been informed and understands CPR's intended use of the PO Deliverables, and all of the PO Deliverables have been selected, designed, manufactured or assembled by Supplier based on CPR's intended use and shall be fit and sufficient for the particular purpose intended by CPR.

- c) Cooperation:** The Supplier shall (at no additional cost to CPR) exercise best effort to communicate and cooperate with other CPR suppliers as may be required for the provision of the PO Deliverables, including with a view to resolving defects and deficiencies in the PO Deliverables which might reasonably be corrected with such cooperation.

- d) Supplier Personnel:** The Supplier Personnel providing the PO Deliverables have the education, training, experience and skills, access to resources, systems and processes necessary to safely, diligently and expeditiously provide the PO Deliverables. Supplier further undertakes to continue to upgrade the education, training and skill of Supplier Personnel to maintain its and Supplier Personnel's alignment to Leading Industry Practices.

The Supplier agrees to ensure that all Suppliers' personnel engaged in the performance of the PO Deliverables have been subjected to criminal, credit, insurance, reference, security and any other industry background checks to ensure that Supplier Personnel is reliable, competent, lawful, available and properly qualified to provide the PO Deliverables pursuant to this Purchase Order. Upon CPR's written request, Supplier agrees to deliver a written statement certifying to CPR that Supplier has complied with requirements set forth in this paragraph.

- e) No Material Adverse Effect or Circumstance:** The Supplier confirms that there is no fact or circumstance known to Supplier that may or could reasonably be expected to materially and adversely affect the condition (financial or otherwise), property, assets, liabilities, business, operations, or prospects of the Supplier.

- f) No Actions:** As at the Effective Date of this Purchase Order, there are no actions, suits, proceedings, or outstanding Claims or demands whatsoever instituted, pending or threatened against Supplier nor are there any facts known to Supplier which could reasonably result in any such actions, suits or proceedings. Following the Effective Date, during the Term of this Purchase Order, Supplier shall immediately notify CPR if an action, suit, proceeding, Claim, or demand whatsoever is instituted, pending or threatened against Supplier which could reasonably affect Supplier's ability to deliver the PO Deliverables in accordance with the terms of this Purchase Order.

- g) No Untrue Statements:** Neither this Purchase Order nor any document, schedule, list, certificate, declaration under oath or written statement now or hereafter furnished by Supplier to CPR pursuant to this Purchase Order: (a) contains any untrue statement or untrue representation of a material fact, or (b) omits a material fact necessary to make any such statement or representation therein or herein contained not misleading.

- h) Good Standing of Supplier:** Supplier is a Person incorporated/existing in good standing under all Applicable Laws, is authorized to enter into this Purchase Order, and has the

capacity and all the permits, licenses and authorizations necessary to carry on its business and perform its obligations.

- i) Execution and Validity of this Purchase Order:** Supplier confirms that the entering into of this Purchase Order, the performance and compliance by Supplier with the terms hereof, and the entering into of the transactions contemplated by this Purchase Order that the performance and compliance with the terms hereof will not:
- a. Conflict with, violate or result in a breach of any of the terms, conditions or provisions of, or constitute a default under any agreement to which Supplier is a party or by which they are bound;
 - b. Result in a violation by Supplier of any statute, regulation, order, law, ordinance or restriction of Canada or the United States of America, or a province, state, territory or municipality thereof that are applicable to Supplier as a provider of PO Deliverables to CPR; or
 - c. Result in a violation by Supplier of any judgment, order or decree of any court, board, judicial or quasi-judicial tribunal having jurisdiction over Supplier or Supplier's property or assets.

G. Liability and Indemnification

- 1. Indemnity and Waiver:** Except to the extent of CPR's own gross and material negligence, Supplier shall be liable to CPR for and shall indemnify, defend, and save harmless CPR and its Affiliates, together with the directors, officers, employees, agents, assigns, representatives, and subcontractors of CPR and its Affiliates, from and against any and all Claims (including legal costs on a solicitor and own client basis) suffered or incurred by CPR that arise out of or result from any act or omission under this Purchase Order, or any breach of this Purchase Order by the Supplier including its directors, officers, employees, agents, affiliates, representatives, assigns and subcontractors, including those:
- a) resulting from any action, suit or proceeding brought by any third party;
 - b) brought or executed in respect of bodily injury (including injury resulting in death) or damage or destruction of property, including CPR's property, brand, good will, reputation, etc.;
 - c) made under Applicable Laws (including workers' compensation legislation);
 - d) arising from product defects and related loss or damage;
 - e) resulting from the release, discharge, seepage or other escape of any substance including chemicals, hazardous or toxic materials, substances, pollutants, contaminants or wastes, whether liquid, gaseous, micro-organic, or of any other nature, which are attributable to Supplier's performance of its obligations in this Purchase Order; and
 - f) brought for actual, alleged, direct or contributory infringement of any patent, trade mark, copyright or intellectual property right (pending or otherwise).
- 2. EXCEPT TO THE EXTENT OF CPR'S OWN MATERIAL NEGLIGENCE, SUPPLIER SHALL MAKE NO CLAIM OR DEMAND AGAINST CPR FOR ANY INJURY (INCLUDING DEATH), CLAIM, EXPENSE, LOSS OR DAMAGE TO PROPERTY SUFFERED OR SUSTAINED BY SUPPLIER OR ANY OTHER PERSON WHICH ARISES OUT OF OR IS CONNECTED WITH THIS PURCHASE ORDER OR ANYTHING DONE OR NOT DONE AS REQUIRED HEREUNDER, OR ANY OTHER ERRORS OR OMISSIONS OF SUPPLIER, AND SUPPLIER HEREBY WAIVES AS AGAINST CPR ALL SUCH CLAIM AND DEMANDS.**

3. For all activity associated with this Purchase Order, the onus of establishing that CPR was negligent, and the extent of that negligence, shall be upon Supplier. CPR shall not be deemed to have caused or contributed to a Claim merely by reason of its knowledge, approval or acceptance of the PO Deliverables (including any related materials and services).
4. Notwithstanding the convention used elsewhere in this Purchase Order, for purposes of this section, (1) any reference to CPR shall include CPR's Affiliates, together with the directors, officers, employees, agents, assigns, representatives, and subcontractors of CPR and its Affiliates; (2) any reference to Supplier shall include Supplier's directors, officers and affiliates, employees, agents, affiliates, representatives, assigns and subcontractors; and (3) any reference to Claim shall mean such term as is defined in the Definitions.
5. **EXCEPT BY WRITTEN INSTRUMENT SPECIFICALLY REFERENCING THIS PARAGRAPH OF THIS PURCHASE ORDER'S TERMS AND CONDITIONS AND SIGNED BY BOTH PARTIES, THIS PARAGRAPH SHALL NOT BE REPLACED OR MODIFIED BY ANY TERMS WHEREVER CONTAINED (E.G. OFFERING DOCUMENTS, TRANSACTIONAL DOCUMENTS, AMENDMENTS, INVOICES, FUTURE AGREEMENTS, OR ELSEWHERE IN THIS PURCHASE ORDER). SUCH ATTEMPTS TO MODIFY OR REPLACE THIS PARAGRAPH'S TERMS AND CONDITIONS SHALL BE DEEMED NULL AND VOID AND SHALL BE READ AS NOT TO EXIST.**
6. This paragraph shall survive the expiration or termination of this Purchase Order and shall in no manner limit or restrict the liabilities and obligations of Supplier in this Purchase Order.

H. Insurance

1. The Insurance requirements are contained in the Definitions and, like all definitions referenced herein, these terms apply *mutatis mutandis* to this Purchase Order.
2. Supplier shall, at its own expense, obtain and maintain, in a form and with an insurance company satisfactory to CPR Insurance Coverage.
3. Supplier agrees that the Insurance Coverage set out herein shall not limit or restrict its liabilities or obligations pursuant to this Purchase Order.
4. The Insurance Coverage required to be maintained pursuant to this Purchase Order shall be primary and not excess of any other insurance that may be available.
5. The Insurance Coverage shall be endorsed to provide CPR with not less than thirty (30) days written notice in advance of cancellation, material change, or amendments restricting coverage.
6. Supplier shall provide CPR with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims, and potential claims concerning this Purchase Order as soon as practicable after the damage, loss, incident, or Claim has been discovered. Supplier is responsible for any deductible and excluded loss under any insurance policy. Moreover, the deductible in any insurance policy shall not exceed such maximum amount that a reasonably prudent business person would consider acceptable.
7. Upon request of CPR, Supplier shall provide a copy of the certificate(s) of insurance evidencing the Insurance Coverage and CPR may require Supplier to annually provide (and Supplier shall provide) a copy of updated certificate(s) of insurance evidencing the renewal of the above Insurance Coverage.
8. Where Supplier maintains a registration with ISNetworld, or any similar organization(s) being utilized by CPR for Supplier safety, security, and insurance compliance, Supplier shall promptly send such certificate(s) of insurance or notice(s) to ISNetworld, or any similar organization(s)

being utilized by CPR for Supplier safety, security, and insurance compliance. For all other cases, such certificate(s) of insurance or notice(s) shall be sent via email to cprail@ebix.com or via fax to (770) 325-6378.

9. CPR shall have no obligation to examine such certificate(s) or to advise Supplier if its Insurance Coverage is not in compliance with this Purchase Order. Acceptance of any certificate(s) which are not compliant with the requirements set out herein shall in no way whatsoever imply that CPR has waived its insurance requirements.
10. CPR reserves the right to maintain the Insurance Coverage in good standing at Supplier's expense and to require Supplier to obtain additional insurance where, in CPR's reasonable opinion, the circumstances so warrant. If the Supplier fails to maintain the Insurance Coverage required in this Purchase Order, CPR may, at its sole and exclusive option, terminate this Purchase Order as a Material Breach without notice, fee or penalty.
11. **Force Majeure** Neither Party shall be responsible for delays in delivery, nor failures in performance directly resulting from acts or omissions beyond the control of such Party, provided such is without the fault or negligence of said Party. Such acts shall include acts of God or of the public enemy, strikes (and labour disruptions), riots, acts of war, governmental regulations enacted after the fact, fire, flood, lasting communication line failures, lasting power failures, earthquakes, or other disasters, (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the Party whose performance is affected shall immediately notify the other Party of the nature and extent of such condition. However, nothing in this paragraph shall relieve a Party from fulfilling its obligations under this Purchase Order due to its own financial obligations or self-made condition. The suspension of performance shall be of no greater scope and of no longer duration than is required by the relevant Force Majeure Event and during the suspension CPR will be under no obligation to make payments to a Supplier. Moreover, should the Force Majeure Event(s) persist for more than five (5) Business Days, in addition to any other remedies available to CPR, at any time CPR may terminate the Purchase Order immediately upon written notice to the other Party, without cost, penalty or liability.

I. Confidentiality and Privacy

1. **Confidentiality:** The Confidentiality and Privacy terms are contained in the Definitions and, like all definitions referenced herein, these terms apply *mutatis mutandis* to this Purchase Order.
2. The Parties agree that any violation of this Confidentiality section is a Material Breach and that CPR may avail itself of any legal or equitable remedies available in the event of such breach.
3. Except with a written instrument specifically referencing this Purchase Order and this paragraph and signed by both Parties, this paragraph shall not be replaced or modified by any terms wherever contained (e.g. amendments, invoices, future agreements, or elsewhere in this Purchase Order).

J. Ownership of Work Product:

1. Except as otherwise provided for in this Purchase Order, all reports, designs, drawings, studies, specifications, software, copyrights, inventions and other work product and intellectual property created, produced or arising in connection with this Purchase Order, whether completed or in progress, and regardless of who was involved therewith, shall be owned exclusively by CPR and either delivered to CPR or made available for inspection by CPR. CPR's ownership of and title to the foregoing shall arise automatically upon creation of the PO Deliverables. To the extent Supplier has any title to the foregoing, Supplier shall take and cause to be taken all necessary steps (including a waiver of any moral rights) to transfer title thereto to CPR.

K. General

- 1. Entire Purchase Order / Invoice Terms of No Effect:** This Purchase Order constitutes the entire agreement of the Parties concerning its subject matter and no other representation, warranties or agreements, either oral or written, shall be binding upon the Parties with respect to this subject matter. This Purchase Order supersedes and invalidates all prior agreements, understandings, negotiations, representations and warranties, whether oral or written, with respect thereto. The terms of this Purchase Order shall supersede any terms attached to Supplier's Offering Document, which terms shall not be applicable to this Purchase Order and shall not be considered to be Supplier's exceptions to the terms of this Purchase Order.
- 2. No Exclusivity:** Supplier acknowledges that it is not the exclusive supplier of the PO Deliverables to CPR and that CPR may, from time to time, purchase PO Deliverables similar or identical from other suppliers at CPR's sole and arbitrary discretion, and that no guarantee of any quantity of PO Deliverables either in volume or dollar value is given or implied by this Purchase Order.
- 3. Assignment:** This Purchase Order is not assignable by Supplier without the prior written consent of CPR (which consent may be withheld in CPR's sole and arbitrary discretion). Any purported assignment by Supplier of any of its rights, duties, or obligations in this Purchase Order, without CPR's written consent shall be voidable by CPR at its option. Supplier shall not in any event be released from its duties and obligations in this Purchase Order. CPR may assign this Purchase Order without obtaining Supplier's consent.

No provision of this Purchase Order shall in any way enure to the benefit of any third person (including the public at large) so as to constitute any such person a third party beneficiary of this Purchase Order or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a Party hereto.

- 4. Binding Effect:** This Purchase Order shall be binding upon and enure to the benefit of each of CPR and Supplier and their respective successors and permitted assigns.
- 5. Independent Supplier:** The Parties agree that Supplier is an independent Supplier, that nothing in this Purchase Order shall be construed as establishing or implying a relationship of master and servant between the Parties, or any joint venture or partnership between the Parties, and that nothing in this Purchase Order shall be deemed to constitute either Party as the agent of the other Party or authorize either Party to incur any expenses on behalf of the other Party or to commit the other Party in any way whatsoever. Supplier shall at no time be deemed to be employees, agents, assigns, representatives, and subcontractors of CPR, or be deemed to be under the control or supervision of CPR when carrying out the PO Deliverables. Without the prior written consent of CPR, Supplier shall not carry on any activity that could be construed as being on behalf of CPR.
- 6. Amendment:** Except with both Parties' written agreement, this Purchase Order may not be varied, modified, amended, supplemented, or replaced without specifically referencing this Purchase Order and which paragraph(s) is being varied, modified, amended, supplemented, or replaced and such agreement is executed by the Parties' authorized representatives.
- 7. Time of the Essence:** Time shall be of the essence in this Purchase Order.
- 8. No Waiver:** Neither Party shall be deemed to have waived the exercise of any right that it holds pursuant to this Purchase Order unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect to any other instance involving the exercise of that right or with respect to any other right.

- 9. Language Laws (Quebec):** The Parties have requested and agreed that this Purchase Order be drafted in the English language. Les parties aux présentes ont demandé que le présent Contrat soit rédigé dans la langue anglaise.
- 10. Referenced Documents:** If a document referenced in this Purchase Order via URL cannot be retrieved on-line, prior to accepting this Purchase Order, Supplier must request a copy of the same to IS_Contract_Management@cpr.ca and ensure receipt. It is understood by the Parties that the referenced document may be updated/amended by CPR from time-to-time and, therefore, Supplier shall ensure monitoring of the site for updates. Failure to receive a copy of the referenced document shall not waive (or otherwise excuse) Supplier from adhering to the terms and requirements set out in such documents.
- 11. Provisions Severable:** If any provision of this Purchase Order is held to be invalid, unenforceable or illegal, such provision shall be deemed to be independent and severable from the remaining provisions of this Purchase Order and the remaining provisions of this Purchase Order shall not be affected and shall be valid and enforceable to the full extent permitted by law.
- 12. Acceptance:** The Parties agree that any or all of: the commencement of activity by the Supplier in respect of the PO Deliverables, the submission of an invoice in respect of the PO Deliverables, or the delivery of any part of the PO Deliverables shall be deemed to be acceptance of this Purchase Order and these Purchase Order Terms and Conditions.

Governing Law

- 13.** Supplier shall comply with the provisions of all laws now in force or that may come into force that expressly or by implication apply to the Supplier in relation to this Purchase Order.
- 14. Governing Law (in Canada):** For the acquisition of PO Deliverables in Canada, this Purchase Order shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by the laws of the Province of Alberta without reference to its choice of law rules. Each of the Parties hereto attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta and the Supreme Court of Canada. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Purchase Order. The Parties hereby waive any right to a trial by jury.
- 15. Governing Law (in US):** For the acquisition of PO Deliverables in the United States of America, this Purchase Order shall be governed by and interpreted in accordance with the laws of the State of Minnesota and the federal laws of the United States of America applicable therein, excluding any conflict of laws rules that may apply therein. The *United Nations Convention on Contracts for the International Sale of Goods* shall not apply to this Purchase Order. The Parties hereby attorn to the exclusive jurisdiction of the courts of the State of Minnesota, without prejudice to the rights of CPR to take proceedings in any other jurisdiction. The Parties hereby waive any right to a trial by jury.
- 16. Notices:** Any notice, consent, demand or other communication that may be or is required to be given pursuant to this Purchase Order shall be in writing and shall be delivered or sent by registered mail to the address of CPR or Supplier, as the case may be, set forth in this Purchase Order. Any notice or other communication contemplated in this Purchase Order shall be deemed to have been given (or received by the other Party) three (3) Business Days after being sent by registered mail to the address set forth in this Purchase Order.
- 17.** Until notice of change of address has been given in the manner provided in this paragraph, notices shall be addressed to Canadian Pacific Railway Company, Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, or Delaware and Hudson Railway Company, Inc., or all, at:

Canadian Pacific Railway Company

Building #1, 7550 Ogden Dale Road S.E.,

Calgary, AB, T2C 4X9 Canada

Attention: Managing Director, Contract and Support Services

- 18.** All notices received by Canadian Pacific Railway Company in accordance with this paragraph shall be deemed to have been received by Canadian Pacific Railway Company, Soo Line Railroad Company, Dakota, Minnesota & Eastern Railroad Corporation, and Delaware and Hudson Railway Company, Inc.
- 19. Non Merger:** paragraphs A1 – A3, B3, B10, B13, C2, C13 – 15, D6 – D 10, D18, E1, E3, F1, G1 – G6, H1 – H9, I1 – I3, J1, K1, K7, K8, K10, K11, K13 – K18 shall survive the expiration or termination of this Purchase Order.

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